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## SUMMARY

The Commission's decision to reverse its exemption from the TIC is grounded in the totally illogical assumption that competitors will somehow receive a "windfall" from the exemption. Not only is such an assumption mathematically false, as TCG demonstrates herein, but such a policy completely overlooks the large advantage that the ILECs have enjoyed for years from the subsidized rate structure the Commission created. Given that the Commission has decided to continue to subsidize ILEC tandem services, it must ensure that it is encouraging competition against such subsidized rates, not discouraging it. The Reconsideration Order, flawed in its facts and reasoning, works against the very competition the Commission is trying to create. In addition, the Commission must also modify its Reconsideration Order insofar as it allows unrecovered transport costs to be recovered through PICCs without any provision for an exemption for users of competing transport services. Finally, the Commission should reverse its conclusions on the assessment of PICCs on Centrex lines.

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262)
	)	
Price Cap Performance Review	)	CC Docket No. 94-1
for Local Exchange Carriers	)	
	)	
Transport Rate Structure	)	CC Docket No. 91-213
	)	

**PETITION FOR RECONSIDERATION  
OF TELEPORT COMMUNICATIONS GROUP INC.**

Teleport Communications Group Inc. ("TCG") hereby requests that the Commission reconsider and modify its Second Order on Reconsideration and Memorandum Opinion and Order in the above captioned matter.<sup>1</sup>

**I. INTRODUCTION**

In the Reconsideration Order, the Commission reverses course from the reasonable and pro-competitive policies adopted in its Access Charge Reform Order, in two particulars of concern to TCG.<sup>2</sup> First, the Access Charge Reform Order recognized the inherent unfairness in requiring users of competitive local transport facilities to pay for the costs

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1. Access Charge Reform, Second Order on Reconsideration and Memorandum Opinion and Order, FCC 97-368, released October 9, 1997 ("Reconsideration Order").

2. Access Charge Reform, First Report and Order, FCC 97-158, released May 16, 1997 ("Access Charge Reform Order").

included in the Transport Interconnection Charge. The Reconsideration Order, however, substantially undermines that pro-competitive policy, and departs from the well-grounded findings of the Access Charge Reform Order without adequate justification or explanation. TCG therefore requests that the Commission reconsider and reverse the Reconsideration Order insofar as it reduces the amount of the exemption available to parties that use transport facilities from a non-ILEC source. Additionally, the Commission should, at a minimum, prohibit the recovery of deferred tandem switching and tandem transport costs through Primary Interexchange Carrier Charges ("PICCs"), without providing for an equivalent exemption, since that practice clearly results in the subsidization of the tandem costs of Incumbent Local Exchange Carriers ("ILECs") by users of competing tandem transport and switching services.

Second, in the Reconsideration Order the Commission reverses its long established policy of treating Centrex users and other local exchange customers alike, and extends favored treatment to Centrex customers with respect to the assessment of PICCs. The Commission should review its Reconsideration Order and eliminate the discrimination in favor of Centrex users.

**II. THE COMMISSION SHOULD NOT ALLOW THE RECOVERY OF ANY TRANSPORT INTERCONNECTION CHARGE REVENUES FROM USERS OF COMPETING TRANSPORT SERVICES.**

In its Reconsideration Order the Commission amazingly reversed its exemption policy because it "could provide an unjustified windfall to competitive providers of local

transport.”<sup>3</sup> Given that its past policies severely penalized those self same competitors of local transport, the Commission’s late-found concerns about competitive fairness *to the ILECs* seem misplaced. But even putting that issue aside, the Commission’s fundamental conclusion that the exemption policy could give competitors a competitive advantage is factually and demonstrably wrong. The Commission, after all, is continuing to allow the ILECs to charge less than their full costs for tandem switching and transport. And because these unrecovered costs are spread across all switched access minutes, the exemption does not even place TCG and its customers in a competitively neutral situation -- not only is there no windfall, there continues to be a disadvantage for competitors of tandem switched services.<sup>4</sup>

In the Access Charge Reform Order, the Commission sought to “establish a mechanism that fosters competition and responds to the D.C. Circuit’s [Comptel Order] remand” by, inter alia, revising its rules governing the TIC rate structure and the application

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3. Reconsideration Order, ¶ 63.

4. This disadvantage can be simply explained. Assume that it costs .6 cent per minute to perform tandem switching, and that 20% of calls are switched by a tandem, assumptions that are within a range of reasonableness overall. The Commission’s Access Reform Order relieves the ILEC from recovering .4 cent/minute from tandem users, and allows them to spread that cost out across all its switched access minutes, tandem routed as well as end office routed. Since only one fifth of calls are tandem routed, that means that the TIC exemption will be worth only .08 of a cent per minute, so that a competitor would have to operate against a rate of .2 cent minute and an exemption of only .08 cent/minute, for a total revenue opportunity on tandem switched calls of .28 cents/minute, compared to an actual cost of .6 cents/minute. The disadvantage would be magnified still further were one to include the unrecovered costs of tandem transport.

of TIC rates.<sup>5</sup> The Commission concluded that the TIC, in its present form, did not serve the public interest because "[a]s a per-minute charge assessed on all switched access minutes, including those of competing providers of transport service that interconnect with the LEC switched access network through expanded interconnection, the TIC adversely affects the development of competition in the interstate access market."<sup>6</sup> The Commission observed that "if the incumbent LEC's transport rates are kept artificially low and the difference is recovered through the TIC, competitors of the incumbent LEC pay some of the incumbent LEC's transport costs."<sup>7</sup> To remedy this problem, the Commission reasonably decided that ILECs should assess the TIC only on switched access minutes that use ILEC transport facilities, and not on any switched minutes transiting competitors' facilities.<sup>8</sup>

The Commission rejected the claims of some parties that "a portion of the costs recovered by the TIC should be considered to be universal service costs," concluding that "[o]n the basis of the record before us, we cannot clearly associate the remaining TIC revenues with any particular facilities or services."<sup>9</sup> It found that "[t]he parties arguing that these costs are related to universal service have not made any clear showing as to the source

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5. Switched Access Order at ¶ 213. Notably, the D.C. Circuit instructed the Commission on remand to develop a cost-based alternative to the RIC [i.e., TIC] or to provide a reasoned explanation for departing from cost-based ratemaking in this instance. Competitive Telecommunications Ass'n v. F.C.C., 87 F.3d 522, 536 (D.C. Cir. 1996) ("Comptel Order").

6. Id. at ¶ 212.

7. Id. at ¶ 240.

8. Id.

9. Id. at ¶ 242.

of these costs or demonstrated why they believe that these TIC revenues are either costs of universal service that should be recovered from the universal service fund or constituent costs of supported services."<sup>10</sup>

The Commission has no basis on which to conclude that "the non-facilities-related portion of the residual TIC does not relate to the use of the incumbent LEC's interstate transport facilities" which is the foundation of its reconsideration decision.<sup>11</sup> While the Commission professes now to be concerned that the TIC exemption might encompass "non transport" costs, it cannot be controverted that all of the money that was originally in the TIC was derived from monies recovered through the pre-existing local transport charges. Interexchange carrier customers have paid these "transport" costs for years with the understanding that they were paying for transport. If the Commission is now saying these were not transport costs at all, are interexchange carriers to be promised a refund?

Nor can it be argued that the ILECs have a built-in incentive to "over-estimate" the portion of the TIC that cannot be reallocated, because by this Reconsideration Decision the Commission has guaranteed the ILECs that they can recover this money free of any competitive pressure. The Commission is, by necessity, relying solely on the ILEC's claims about what portions of the TIC can be reallocated to other rate elements. The Commission is, therefore, allowing the ILECs to define what portion of the TIC will be subject to the exemption, and creating incentives to overestimate the portion in the TIC. By contrast, the wiser policies of the Access Charge Reform Order created a positive incentive for the ILECs

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10. Id.

11. Reconsideration Order, ¶ 61.



to fairly and reasonably allocate costs to transport rate elements and the TIC by providing for a competitive check on all rate elements.

Nor can this charge of policy be justified on "universal service" grounds. The Commission provides no new evidence to support its new belief that portions of the TIC "may be a form of implicit universal service support,"<sup>12</sup> a conclusion contradicted by its statements in the Access Charge Reform Order that no such finding was possible.<sup>13</sup> By its Reconsideration Order, the Commission has largely erased the only pro-competitive, market based check on ILEC pricing practices that it adopted in its Access Charge Reform Order. At the same time, the Commission professes to believe that its "approach to access reform relies first on increasing market-based pressures as competition develops to place downward pressure on access charge levels."

By guaranteeing that the ILECs will continue to receive billions of dollars in TIC revenues, perfectly exempt from any competitive pressure, the Commission has hardly adopted a competitively neutral approach. Nor has it explained with any clarity how competitors -- deprived of such a guaranteed revenue stream and unable to compete against it -- are somehow "advantaged" compared to the giant monopoly ILECs they must compete against. For these reasons, TCG believes that the Commission must reconsider and reverse its Reconsideration Order, and restore the TIC exemption to its prior status.

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12. Id., ¶ 70.

13. Indeed, if the Commission is basing its TIC exemption policies on universal service grounds, such a policy appears to be flatly inconsistent with the mandate of the Telecommunications Act of 1996, which does not permit subsidy of competitive services and requires that universal service support be, inter alia, equitable, nondiscriminatory, specific, and predictable. See Section 254 of the Communications Act.

In addition, the Commission must also modify the recovery method for TIC costs. The Reconsideration Order makes clear that the ILECs are to be given the ability to recover these unrecovered tandem transport and tandem switching costs from PICCs. These PICCs will be collected from interexchange carriers -- even those that use competing transport. Such a policy is directly contrary to the Commission's findings about the reason for the TIC exemption in the first place.

The Commission's error in this matter seems to flow from its mistaken understanding of the marketplace impact of its Access Charge Reform Order. The Commission recognizes that its "three-step reallocation process [delaying the full recovery of tandem transport and switching costs] will ... permit a continued subsidy of the incumbent LEC's tandem switch by users of the incumbent LEC's direct-trunked transport facilities."<sup>14</sup> The Commission, however, erroneously concludes -- without any explanation or support -- that because "incumbent LEC's competitors offering transport services will not be subject to this subsidy, they may enjoy a slight competitive advantage over the incumbent LEC."<sup>15</sup> *Nothing could be farther from the truth.*

The Commission's decision to delay the adoption of full cost based rates for tandem switching and tandem transport means that competitors like TCG must continue to compete against rates that are set to recover only one third (or later two thirds) of actual costs -- and that TCG's own customers are being forced to pay for the "missing" ILEC revenues through PICC charges. No one is paying two thirds of the costs of TCG's tandem switches. But if

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14. Id., ¶ 67.

15. Id.

TCG is forced to compete against ILEC rates that only need recover 33% of their costs while TCG must cover 100%, there is no competitive advantage to TCG there. In fact, the TIC exemption does nothing more than mitigate -- and only in part -- the competitive disadvantage faced by facilities based competitors like TCG.

By allowing the ILECs to use PICCs to recover these tandem transport and tandem switching costs, however, the Commission is adopting a policy that is flatly and clearly inconsistent with the entire rationale for the exemption in the first place. In the Reconsideration Order, the Commission states that "because these [unrecovered tandem] costs are incurred on behalf of the incumbent LEC's own transport operation, however, it would be inconsistent with the principles of cost-causation to prolong the recovery of these costs from users of competing transport facilities."<sup>16</sup> Yet by allowing the ILECs to recover these costs from PICCs, the FCC is adopting a policy that does precisely that. Accordingly, even if the Commission does not elect to reverse its Reconsideration Order in its entirety, it should at a minimum modify to make clear that users of competing transport services are *never* required to compensate the ILEC for unrecovered costs of the ILECs transport services.<sup>17</sup>

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16. Id., ¶ 65.

17. Mechanically, this policy can be accomplished by allowing the unrecovered costs of tandem switching to be included in PICCs but providing that users of competing transport services are entitled to an exemption on all minutes that use alternative transport equal to the equivalent per minute exemption amount.

### **III. THE COMMISSION SHOULD TREAT CENTREX USERS AND OTHER MULTILINE BUSINESS USERS ALIKE FOR PURPOSES OF APPLYING PICCs CHARGES**

In its Reconsideration Order, the Commission decided to grant ILEC Centrex users a substantial discount from the PICC charges that would otherwise be assessed against them.<sup>18</sup> The Commission based this conclusion on two factors. First, it states that it does not wish “to encourage a large customer to choose one of these arrangements, PBX, over another, Centrex, simply because, as a result of its IXC being charged substantially more PICCs, *i.e.*, non-cost-related charges, for Centrex service, the PBX service becomes cheaper.” The Commission, however, offers no basis for its conclusion that there will be any such movement. There is certainly an equality in the assessment of the much large Subscriber Line Charges which are directly chargeable to end user customers, and that has not proven to create any independent demand shifts between Centrex and PBX users. Indeed, in the same Access Charge Reform Order the Commission has decided to substantially increase the maximum Subscriber Line Charges that can be collected from Centrex Users -- in an amount potentially much larger than the expected size of the PICCs -- with no apparent concerns about mass movements of consumers.

Moreover, the PICCs are assessed to IXCs, rather than directly to end users, and there is no marketplace experience on which to conclude that interexchange carriers will pass those charges through in a manner that would encourage demand shifts from Centrex to PBXs. Finally, and perhaps most importantly, the Commission itself admits that its PICCs

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18. Reconsideration Order, ¶ 37.

are intended to be imposed only "for a limited period."<sup>19</sup> Given that Centrex and PBX investments are major investments for customers, and typically take considerable time to select, purchase, and install, it is hardly likely that end user customers will make major procurement and investment decisions based on PICC charges that are imposed on IXCs, not themselves, and only for a limited period of time.

Second, the Commission also notes that many Centrex users are government, education, and health care facilities, and expresses a concern about impacting their expense budgets.<sup>20</sup> To the extent that the Commission has concerns about the telecommunications expenses that face such organizations, that concern really is a universal service issue that should be addressed in the context of universal service, rather than by creating a discrimination in the application of the PICCs. Certainly in the case of education organizations and rural health care organizations, the Act's universal service policies already provide a means to aid these organizations. And were the Commission to conclude that government agencies are entitled to some relief from cost increases, the Communications Act permits separate rates for government users. Those options are certainly more targeted to the classes of users that seem to have prompted the Commission's concerns, and would permit the PICCs to be applied in a uniform manner, like other per line charges.

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19. Id.

20. Id., ¶ 34.

#### IV. CONCLUSION

For the reasons stated above, the Commission should reconsider and reverse its Reconsideration Order.

Respectfully submitted,

TELEPORT COMMUNICATIONS GROUP INC.

A handwritten signature in cursive script, reading "J. Manning Lee", positioned above a horizontal line.

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